

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Petition for Expedited Forbearance Under
47 U.S.C. § 160(c) for Imposition of
Additional Unbundling Obligations

WC Docket No. 05-261

OPPOSITION OF VERIZON¹ TO APPLICATION FOR REVIEW

The Commission should deny Fones4All Corporation's ("Fones4All") application for review of the Order of the Wireline Competition Bureau ("Bureau") extending by 90 days the time for consideration of Fones4All's petition for forbearance in this docket.² Although Fones4All's petition raises no permissible grounds for forbearance and should be rejected,³ the Commission has lawfully delegated to the Bureau the authority to extend the statutory deadline for consideration of forbearance petitions. In addition, the Bureau's stated explanation for extending the deadline, in the circumstances of this case, was adequate.

¹ The Verizon companies participating in this filing ("Verizon") are the regulated, wholly owned subsidiaries of Verizon Communications Inc.

² See Order, *Fones4All Corp. Petition for Expedited Forbearance under 47 U.S.C. § 160(c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service*, WC Docket No. 05-261, DA 06-1240, ¶ 3 (WCB rel. June 8, 2006) ("Order").

³ See, e.g., Opposition of Verizon to Petition for Expedited Forbearance, *Petition for Expedited Forbearance under 47 U.S.C. § 160(c) for Imposition of Additional Unbundling Obligations*, WC Docket No. 05-261 (filed Oct. 14, 2005).

I. THE COMMISSION LAWFULLY DELEGATED AUTHORITY TO THE BUREAU TO EXTEND THE TIME FOR CONSIDERATION OF PETITIONS FOR FORBEARANCE

A. The Delegation of Such Authority Is Permitted Under the Communications Act

Fones4All’s lead argument — that the references in 47 U.S.C. § 160 to “the Commission” preclude the delegation of the Commission’s authority under § 160, including the authority to extend the statutory deadline under § 160(c) — is without merit.

The Communications Act unmistakably establishes that an action taken pursuant to delegated authority is an act of *the Commission*. See 47 U.S.C. § 155(c). In § 155(c), Congress gave the Commission authority to “delegate *any* of its functions” to a bureau, *id.* § 155(c)(1) (emphasis added), and provided that decisions made pursuant to such delegated authority “shall have the same force and effect . . . as orders, decisions, reports, or other actions *of the Commission*,” *id.* § 155(c)(3) (emphasis added). In addition, when Congress wanted to limit the Commission’s authority to delegate to bureaus, it did so expressly, providing that the Commission could *not* delegate functions pertaining to §§ 204(a)(2), 208(b), and 405(b) of the Act. See *id.* § 155(c)(1). Congress made no mention of § 160, making clear that the Commission may delegate authority under that section to the Bureau.

In light of the plain text of the Act, Fones4All’s contention that § 160(c)’s reference to “the Commission” precludes the Commission from authorizing the Bureau to decide whether to extend the time for consideration of Fones4All’s petition for forbearance is unavailing.⁴

⁴ Similar analysis refutes any suggestion by Fones4All (at 4-5) that the Act requires consultation between the Bureau and the Commission before an extension of time under § 160(c). Nothing in the text of §§ 155 or 160 supports the proposition that the exercise of delegated authority is proper only after such consultation. Such a proposition would be at odds with the purpose of delegated authority, which is to avoid the need to involve the Commission as a whole ahead of time in every decision made on delegated authority.

B. The Commission’s Regulations Permit the Bureau To Extend the Time for Consideration of a Forbearance Petition

As the Bureau properly found, in 47 C.F.R. § 0.91 the Commission delegated authority to the Bureau to, among other things, “[c]arry out the functions of the Commission under the Communications Act of 1934.” 47 C.F.R. § 0.91(m); *see Order* ¶ 3. In addition, § 0.291 affords the Chief of the Wireline Competition Bureau the “delegated authority to perform all functions of the Bureau, described in § 0.91.” 47 C.F.R. § 0.291; *see Order* ¶ 3. Therefore, the Bureau and its Chief plainly have the delegated authority to extend the time for consideration of a petition for forbearance under 47 U.S.C. § 160(c), unless that action falls within one of the “exceptions and limitations” listed in § 0.291. 47 C.F.R. § 0.291.

Fones4All relies on one such limitation, which provides that delegated authority is withheld with respect to “applications or requests which present novel questions of fact, law or policy which cannot be resolved under outstanding precedents and guidelines.” *Id.* § 0.291(a)(2). But Fones4All is wrong in claiming that § 0.291(a)(2) prevents the Bureau (or its Chief) from issuing an order under § 160(c) extending the time for consideration of a forbearance petition.

First, a decision to extend the time for consideration of a petition for forbearance is not a decision on an “application[] or request[]” at all. The decision Fones4All challenges here is the Bureau’s extension of a deadline, not a ruling on the merits of Fones4All’s “application[] or request[].” Indeed, no “application[] or request[]” for an extension of time was made by any party. Therefore, by its own terms, § 0.291(a)(2) does not limit the scope of delegated authority in this case.

Second, the decision to extend the time for consideration of a forbearance petition does not involve any “novel question[] of fact, law or policy.” On the contrary, the Bureau’s decision

that the additional time was “necessary” to complete consideration of the forbearance petition in light of the criteria of § 160(a) is a procedural, rather than a substantive, order. And it merely tracks prior orders in which the Commission has extended the deadline for other petitions in order to evaluate fully the merits.⁵

Fones4All erroneously relies on the fact that § 160(c) provides for the extension of “the initial one-year period by an additional 90 days” upon a finding that “an extension is necessary to meet the requirements of [§ 160(a)].” 47 U.S.C. § 160(c). But a determination that an extension is “necessary” to enable complete consideration of a petition is not a decision about any “novel question[] of fact, law or policy” presented by the substance of the petition. Instead, as shown above, it involves a rather routine procedural question, and one that the Bureau is well positioned to decide.

* * *

Because the Bureau plainly has authority — under the Communications Act and the Commission’s rules — to extend the deadline, the fact that it was the Bureau and not the Commission that granted the extension does not mean, as Fones4All has claimed, that the petition was “deemed granted” under § 160(c).⁶

⁵ See, e.g., Order, *Personal Communications Industry Association’s Broadband Personal Communications Services Alliance’s Petition for Forbearance for Broadband Personal Communications Services*, 13 FCC Rcd 14681, ¶¶ 5-6 (1998).

⁶ See Letter From Ross Buntrock, Counsel for Fones4All, to Marlene Dortch, Secretary, FCC, WC Docket No. 05-261 (filed July 3, 2006).

II. THE BUREAU’S RATIONALE FOR EXTENDING THE STATUTORY DEADLINE HERE WAS ADEQUATE

Fones4All (at 5) argues in the alternative that the Bureau failed to “offer any substantive explanation related to the need for extending the deadline.” Although the Bureau’s explanation was brief, it was, in the circumstances here, sufficient.⁷

The Bureau’s decision to extend the time for consideration was sensible given that a group of CLECs, led by XO Communications, had filed a forbearance petition that was similar to Fones4All’s — except that it pertained to the Commission’s decision not to require unbundling of high-capacity facilities, rather than the UNE-Platform — and the Bureau had previously extended the deadline for consideration of that petition to June 25, 2006.⁸ Without the extension, the time for ruling on Fones4All’s petition would have been only six days later — July 1, 2006. Given the substantial overlap between the petitions, it was reasonable for the Bureau, on June 8, 2006, to conclude that six days would be insufficient time for the Commission — and, moreover, for the parties — to consider the appropriate resolution of Fones4All’s petition in light of the disposition of XO Communication’s petition. *See Order* ¶ 1 & n.2 (stating that XO Communication’s pending petition “raised complex issues similar to those [questions] raised in the [Fones4All] proceeding”).

⁷ *Cf. Jost v. Surface Transp. Bd.*, 194 F.3d 79, 85 (D.C. Cir. 1999) (“‘We may not supply a reasoned basis for the agency’s decision that the agency itself has not given. We will, however, uphold a decision of less than ideal clarity if the agency’s path may reasonably be discerned.’”) (internal alteration omitted; quoting *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

⁸ *See Order, Petition for Forbearance under 47 U.S.C. § 160(c) from Application of Unbundling Rules that Limit Competitive Alternatives*, 21 FCC Rcd 2075 (2006). That petition for forbearance has since been withdrawn. *See Letter From Steven Augustino, Counsel for XO Communications, to Marlene Dortch, Secretary, FCC, Petition for Forbearance under 47 U.S.C. § 160(c) from Application of Unbundling Rules that Limit Competitive Alternatives*, WC Docket No. 05-170 (filed June 23, 2006).

In addition, while Fones4All styled its petition as one for “expedited forbearance” and also filed a related “emergency petition” for interim waiver,⁹ Fones4All claimed that it needed an answer from the Commission *before* March 11, 2006. That date has now come and gone without issue. For example, as Verizon has explained elsewhere, by the end of 2005, approximately 92 percent of the UNE-P arrangements in place on March 11, 2005 in Verizon’s region had already been transitioned to commercial arrangements; that number is approaching 100 percent today.¹⁰ Because March 11, 2006 has passed without event, an additional 90 days now for the Commission to consider fully Fones4All’s petition would not create any hardship.

While neither the Bureau nor the Commission is authorized under § 160(c) to grant extensions as a matter of course — because the term “necessary” in § 160(c) plainly imposes limits on the use of the 90-day extension authority — in the circumstances of this case, there is sufficient reason for extending the deadline to permit full consideration of Fones4All’s petition for forbearance.¹¹

⁹ Fones4All Corp. Emergency Petition for Interim Waiver, *Fones4All Corp. Petition for Expedited Forbearance under 47 U.S.C. § 160(c) and Section 1.53 from Application of Rule 51.319(d) to Competitive Local Exchange Carriers Using Unbundled Local Switching to Provide Single Line Residential Service to End Users Eligible for State or Federal Lifeline Service*, WC Docket Nos. 05-261 & 04-313, CC Docket 01-338 (filed Feb. 24, 2006).

¹⁰ See Reply Comments of Verizon, *Georgia Public Service Commission Petition for Declaratory Ruling*, WC Docket No. 06-90, at 18 (filed June 5, 2006).

¹¹ Even if the Commission were to view the Bureau’s explanation as too terse, that is ultimately of no legal import because the Bureau plainly has authority to make the extension decision and because the Bureau could easily expand upon its explanation. Therefore, at most, the Commission should instruct the Bureau to provide a more detailed explanation or should provide that reasoning itself in denying Fones4All’s application for review. *Cf. Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1049 (D.C. Cir. 2002) (remanding without vacatur because “we cannot say it is unlikely the Commission will be able to justify a future decision to retain the Rule”).

CONCLUSION

For the foregoing reasons, the Commission should deny Fones4All's application for review.

Respectfully submitted,

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July 13, 2006

CERTIFICATE OF SERVICE

I hereby certify that, on July 13, 2006, I caused a copy of the foregoing Opposition of Verizon to Petition for Forbearance to be served upon each of the parties on the service list below by first-class mail, postage prepaid.

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